



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

ATTACHMENT A
Department of Law

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May 1, 2018

The Honorable Bill Walker
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 287: Appropriations: Pupil education
and transportation: (SCS HB 287(FIN))
Our file: 2018200330

Dear Governor Walker:

At the request of your legislative director, we have reviewed SCS HB 287 (FIN), an appropriation bill making appropriations for fiscal years 2019 and 2020 for public education and transportation of students.

Since this is an appropriation bill, it is exempt from the constitutional requirement that it be confined to one subject; however, since it is an appropriation bill it "shall be confined to appropriations" (art. II, sec. 13, Constitution of the State of Alaska). Accordingly, you may "veto, strike, or reduce items" in the bill (art. II, sec. 15, Constitution of the State of Alaska). Further, some provisions of this bill are contingent upon enactment of a separate bill – Senate bill 26, a bill primarily relating to spending from the earnings of the Alaska permanent fund.

Sections 1, 2, and 3 of the bill present typical appropriation provisions to appropriate to the Department of Education and Early Development K-12 aid to school districts, K-12 support, and appropriations for Mt. Edgecumbe boarding school. Section 2 details the funding by agency (federal receipts, unrestricted general fund, etc.) for the appropriations made in sec. 1. Next, Section 3 sets out the statewide funding sources for appropriations made in sec. 1 (unrestricted or designated general funds, public school trust funds, statutory designated program receipts, federal receipts, and interagency receipts). Except for the fact this bill addresses only education funding, nothing appears unusual about secs. 1 – 3.

Sections 5(a) and (b) are fund capitalization provisions that appropriate from the general fund to the public education fund.

Sections 4, 5(c), and 5(d) include education related appropriations for fiscal year 2020 from the general fund. Pursuant to sec. 8, these appropriations do not take effect until July 1, 2019. Although not common, it is permissible for the legislature to include in a budget bill appropriations for future fiscal years. These appropriations do not bind a future legislature because a future legislature can always amend, reappropriate, or repeal the future appropriations. Section 6 provides that the appropriations in sec. 5 are for the capitalization of a fund and do not lapse.

Section 7 is a contingency provision. It provides that the fiscal year 2020 appropriations in sections 4, 5(c), and 5(d) are contingent on passage and enactment into law by the Thirtieth Alaska State Legislature of a version of Senate Bill 26. Senate Bill 26 proposes a framework for the spending of permanent fund income. The Alaska Supreme Court has found that contingency language should be subject to the same analysis as legislative intent language.¹ This requires consideration of whether such a provision violates the confinement clause of the Alaska Constitution which states that "[b]ills for appropriations shall be confined to appropriations."² Alaska courts have used a five factor test to determine whether language added to an appropriations bill violates the confinement clause. Under this test (the *Hammond factors*), the qualifying language must (1) not administer the program of expenditures; (2) not enact law or amend existing law; (3) be the minimum necessary to explain the legislature's intent regarding how the money appropriated is to be spent; (4) be germane, that is, appropriate, to an appropriations bill; and (5) not extend beyond the life of the appropriation.³

Here, an appropriation to fund education for fiscal year 2020 appears to be reasonably related (germane) to the contingency provision regarding enactment into law of SB 26 given that SB 26 concerns a possible funding source for the future appropriations.⁴ Additionally, we would raise constitutional concerns if the linkage between enactment of SB 26 into law and the appropriations would infringe on the governor's veto authority. We do not see such an issue with sec. 4 as it establishes a \$30,000,000 appropriation and you could reduce or strike that appropriation amount. Section 5(c) and (d) presents unusual language because the provisions do not include an estimated amount, likely because the legislature is not able to determine an amount given that these appropriations are for fiscal year 2020. In these circumstances, you could strike language concerning the estimated

¹ See *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 378-84 (Alaska 2001).

² Art. II, sec. 13.

³ *Alaska Legislative Council*, 21 P.3d 367, 377 (Alaska 2001).

⁴ Under the germaneness test, courts will generally uphold conditions expressed for purposes of the appropriation. *Id.*

amount so long as it did not alter the purpose of the appropriation.⁵ We are available for additional consultation on that issue if desired.

We have identified no other constitutional or legal issues in the bill. We will assist the agencies throughout the year in interpreting and applying the provisions of the bill, as well as related legislation, to make certain that appropriations are implemented in a manner that is consistent with enabling statutes and valid legislative intent.

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By:



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⁵ See *Wielechowski v. State*, 403 P.3d 1141 (Alaska 2017).